

BAIL SLIP

The Appellant/Accused Viz., namely Sanjeevi, S/o.Balakrishnan, was released on Bail as per order of this Court dated 14.10.2015 and made in CRL MP(MD)No.1 of 2015 in CRL A(MD) NO.285 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.285 of 2015

Sanjeevi

... Appellant /Accused

Vs.

The Inspector of Police,
Thuvakudi Police Station,
Trichy City.

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to allow this appeal and acquit the appellant by setting aside the judgment dated 28.06.2013 in S.C.No.217 of 2012 passed by the Principal Sessions Judge, Tiruchirappalli.

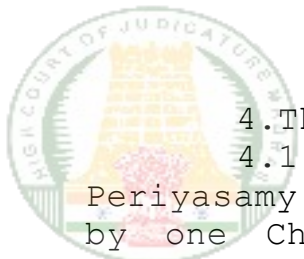
For Appellant	: Mr.S.Ravi,
	Legal Aid Counsel
For Respondent	: Mr.Robinson,
	Government Advocate (Crl Side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant in S.C.No.217 of 2012 by the learned Principal Sessions Judge, Tiruchirappalli dated 28.06.2013.

2.This appellant / sole accused was tried for the offence under Section 302 of the Indian Penal Code, 1860 [in short 'IPC'] by the learned Principal Sessions Judge, Tiruchirappalli in S.C.No.271 of 2012.

3.The learned Principal Sessions Judge, Tiruchirappalli, by order dated 28.06.2013 in S.C.No.217 of 2013, found this appellant not guilty for the offence under Section 302 IPC, but found him guilty under Section 304 (II) IPC, convicted and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default of payment of fine, sentenced him to undergo rigorous imprisonment for a period of six months. Aggrieved over the conviction and sentence, the appellant/ accused filed this present appeal.



4.The case of the prosecution in nutshell is as follows:

4.1.The appellant namely Sanjeevi and the deceased namely Periyasamy @ Kannan were the workers in Sreenga Tiffin Stall run by one Chithiravel [PW1] / complainant at Ayyampatti Road in Thuvakudi. The accused was working as a Parotha Master and the deceased was working as a Cook in the said stall. Both of them used to stay in the tiffin stall after their work. The shop usually functions till 10.00 p.m. On 02.06.2012, the accused was watching Television in the midnight and the same was objected to by the deceased that his sleep got disturbed. There arose a quarrel between them. PW2 Saravanan, who was working as a Tea Master of a nearby Tea shop informed PW1 Chitravel about the quarrel. On knowing this, Chithiravel [PW1] rushed to his tiffin stall in an Auto along with his cousin Ramu [PW3] and at that time, the appellant/accused attacked the deceased with a firewood repeatedly in the presence of PW1 and PW3 and on seeing them, he ran away with the firewood.

4.2.PW1 along with PW2 and PW3 took the deceased, to a private Hospital namely TMC Hospital at Tiruverumbur and after providing first aid treatment, they have taken the deceased to the Government Hospital at Tiruchirappalli. Dr.Premalatha [PW8], who attended the deceased on 03.06.2012 at 1.45 a.m., reported as brought dead. She also issued an accident register [Exp6].

4.3.Thereafter, PW1 went to the Thuvakudi Police Station on 03.06.2012 at about 10.00 a.m and lodged a complaint [Exp1] before the Inspector of Police, Thuvakudi Police Station. R.Mathan [PW11], the Inspector of Police, received the complaint [Exp1] and registered the same in Crime No.116 of 2012 under Section 302 IPC, as against this appellant and the printed First Information Report is marked as Exp8. He also sent the printed FIR [Exp8] to the learned Judicial Magistrate No.VI, Tiruchirappalli, who received the same at 6.00 p.m on the same day i.e., on 03.06.2012. He also went to the place of occurrence around 11.00 a.m, prepared an observation mahazar [Exp2] and a rough sketch [Exp9] in the presence of one Suresh [PW5] and one Manikandan [DW4]. PW11 also recovered the blood stained mat [MO2] and a blood stained Towel [MO3] under a cover of mahazar [Exp3] and also sent the same to the learned Judicial Magistrate in Form 95. PW11 also arranged for taking photographs of the place of occurrence through a photographer [DW2]. The photographs and the CD were marked as MO7 series.

4.4.Thereafter, PW11 went to the Government Hospital, Tiruchirappalli, where the dead body was lying, conducted an inquest in the presence of panchayatars and the inquest report is marked as Exp11. Thereafter, he sent the body for postmortem. PW13 Dr. Benuga Devi, who conducted autopsy on 04.06.2012 at 11.00 a.m



has noted the following injuries on the deceased:

"Wounds:

1. Black eye - both eye
2. sutured wounds, a transverse sutured wound, 6 cm in length on the right side of forehead, an oblique sutured wound, 5 cm in length on the right temple region, on removal of the sutures, edges are irregular, 1cm in breadth X bone deep.
3. Lacerated wounds:- on the left side of the forehead, 5 cm in length, left eye brow, 3 cm X 0.5 cm X bone deep.
4. Bruising of frontal, left temporal left parietal, left side of occipital regions of the scalp and left temporalis muscle - Dark red
5. Fissured fracture of frontal, left temporal, left side of occipital bone present.
6. Sub dural haemorrhage and sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres.
7. Fracture base of skull - Anterior, left middle cranial fossae present."

The Doctor gave her opinion that the deceased died of head injury.

4.5. The Investigation Officer [PW11] recorded the statement of the witnesses. Subsequently, PW11 arrested the accused on the same day at about 2.00 p.m., near Muneeswaran Temple at Ayyampatti road and recorded his confession statement [Exp5] in the presence of PW7 and another. Pursuant to his confession statement, PW11 recovered a piece of wooden log measuring about 30cm from the accused and a blood stained shirt [M06]. The recovered articles were sent for chemical analysis and the same were examined by the Scientific Expert [PW9] and the forensic report of the Deputy Director of Regional Forensic Science Laboratory is marked as Exp19. According to the Scientific Expert, blood was detected in all the items except M02, but the group of the blood was not detected.

4.6. After completing the investigation, PW11 filed the final report as against this appellant on 29.08.2012 for the offence under Section 302 IPC and the same was taken on file in PRC No.26 of 2012 by the learned Judicial Magistrate No.VI, it was committed to the Court of Sessions and the same was taken on file by the learned Principal Sessions Judge, Tiruchirappalli.

5. During the trial on the side of the prosecution 13 witnesses were examined and 25 documents were marked besides 11 material objects.

6. PW1 Chithiravel is the complainant and he is the owner of the tiffin stall, where the appellant and the deceased were working. He was examined as an eye witness. PW2 Saravanan is the



employee in the adjacent tea stall, who informed PW1 about the quarrel and he was examined as eye witness. But he was treated as hostile. PW3 Raman is the cousin of PW1, who is said to have accompanied PW1 to the occurrence place and he was also treated as hostile. PW4 Panchavarnam is the wife of the deceased and PW5 was examined for the observation mahazar and recovery of the material objects from the place of occurrence. PW6 Maritmuthu was examined for the arrest and recovery of the material objects 6 and 8. PW8 Dr.Premalatha is the Doctor at Government Hospital, Tiruchirappalli, who attended the deceased on the date of occurrence and declared him as brought dead, issued accident register Exp6. PW9 S.S.Rajendran is the Scientific Officer, through him the viscera report [Exp7] is marked. PW10 Sathishkumar is the constable, who despatched the FIR to the learned Judicial Magistrate concerned and PW11 is the Inspector of Police, who registered the FIR [Exp8], conducted the investigation, arrested the accused and also filed the final report. PW12 Dr.Anand of a private hospital, Tiruverumbur provided first aid to the deceased on the date of occurrence. PW13 Dr.Renuka Devi conducted autopsy and through her postmortem certificate [Exp23], biology report [Exp24] and serology report [Exp25] were marked.

7.The incriminating materials from the prosecution's case were put to the accused under Section 313 CrPC and the accused had denied the same. The accused had examined witnesses DW1 to DW4, who were cited as eye witness by the respondent Police in the final report, but were not examined by the prosecution. DW1 is the Auto Driver, who took the deceased and PW1 to the hospital on the date of occurrence. DW2 is the Photographer, who took photographs from the place of occurrence on the directions of the respondent Police. DW3 is Senthil Kumar, who noticed PW1 taking the deceased in an Auto. DW4 is the other witness, in whose presence the observation mahazar and other material objects were recovered from the place of occurrence.

8.In conclusion of the trial, the trial Court found this appellant guilty, convicted and sentenced him as stated supra. As against the conviction and sentence imposed on the appellant / accused, he has preferred the present appeal.

9.When this appeal was taken up for final hearing on 30.07.2020, Mr.Sekar, learned Counsel representing Mr.P.Ganapathi Subramaniam, learned Counsel for the appellant submitted a letter withdrawing his appearance in this case and therefore, this Court directed the appeal be posted in the name of the appellant on 05.08.2020. When the appeal was taken in the name of the appellant on 05.08.2020, there was no representation on behalf of the appellant. Therefore, this Court by order dated 05.08.2020 appointed Mr.S.Ravi, who is having more than 20 years of



experience in criminal side, as a Legal Aid Counsel to proceed with the appeal on behalf of the appellant.

10. Heard Mr.S.Ravi, learned Legal Aid Counsel appearing for the appellant and Mr.Robinson, learned Government Advocate (Crl Side) appearing for the State.

11. Mr.S.Ravi, learned Counsel submitted that the motive projected by the prosecution is not established in this case. According to the prosecution case, there was a quarrel between appellant and the deceased on account of watching Television. But PW1 did not depose any such thing in his evidence. Moreover, the said Television is not mentioned either in the observation mahazar [Exp2] or in the rough sketch [Exp9]. He further submitted that PW1 along with other witnesses took the deceased to the Government Hospital at Tiruchirappalli at 4.45am on 03.06.2012, wherein the deceased was declared brought dead, but the complaint was lodged only at 10.00am and the FIR reached the Court concerned only at 6.00pm. Therefore, the delay of five hours in reporting the incident to the Police and the delay of eight hours in the FIR reaching the Court is not explained by the prosecution.

12. The learned Counsel further submitted that though PW1 to PW3 were examined as eye witnesses, PW2 and PW3 did not support the case of the prosecution. According to the prosecution, on information, PW1 along with PW3 went to the occurrence place, where he witnessed the appellant attacking the deceased. According to the learned Counsel, this evidence of the PW1 is not acceptable and unbelievable and therefore, the presence of PW1 could not be believed.

13. The learned counsel further submitted that the prosecution's case is that PW1 along with PW2 and PW3 initially went to the private hospital of PW12 at Tiruverumbur and first aid was provided to the victim. Thereafter, he was taken to the Government Hospital at Tiruchirappalli, where he was declared brought dead as per the accident register [Exp6]. The entries in Exp6 shows that the deceased was brought by one Raman. The name of the deceased is recorded as unknown and the history of assault details is mentioned as not known. Therefore, according to the learned counsel for the appellant, if really PW1 has taken the deceased to the hospital, the details would have been furnished to the Doctor and the same would have been reflected in the accident register. He further submitted that there is no material to show that the deceased and the accused were staying together during the occurrence night on 02.06.2012. For the reasons above, the prosecution has not established its case.



14.Per contra, Mr.Robinson, learned Government (Crl Side) submitted that PW1 has stated about the occurrence and though PW2 turned hostile, PW2 admitted in his evidence that he only informed PW1 about the occurrence and on his information only PW1 came to the place of occurrence and they took the deceased to TMC Hospital at Tiruverumber and thereafter to the Government Hospital, Tiruchirappalli. The Doctor [PW13], who conducted postmortem gave her final opinion that the deceased died due to the head injuries. The Investigation Officer has recovered a wooden log from the place of occurrence and also another piece of wooden log from the accused. He also recovered a blood stained mat and blood stained clothes from the accused as well as the deceased. Though the group of the blood was not detected, the presence of the human blood was detected. Thus, the prosecution has proved its case beyond reasonable doubt and therefore, there is no reason to interfere with the orders of the trial Court

15.This Court paid its anxious consideration to the rival submission made on either side and perused the available records.

16.The occurrence in this case has taken place in the early morning hour on 02.06.2012. According to the prosecution, the deceased and the appellant were working in the tiffin stall of PW1. On 02.06.2012, after their work, they were staying in the tiffin stall and the appellant/accused was watching Television, which was disturbing the deceased's sleep and therefore, the deceased quarrelled with the appellant and consequently, the appellant attacked the deceased with a wooden log.

17.PW1 Chitravel owner of the tiffin shop on getting information from PW2, rushed to his hotel / place of occurrence immediately in an Auto along with PW3, witnessed the occurrence and also took the deceased to a private hospital of PW12 at Tiruverumbur, provided first aid treatment to the victim and thereafter took him to the Government Hospital at Tiruchirappalli. The Doctor [PW8], who attended the deceased on 03.06.2012 at about 4.45am, recorded her observation in the accident register [Exp6]. In the accident register Exp6, the deceased name is mentioned as 'unknown' and the address is also mentioned as 'unknown. It is also recorded that the deceased was brought by one Raman. In the coloumn of nature of injury and treatment, it is recorded that the patient was brought unconscious, Annaivalavu Ravichandran Colony Main Road, 1.00am, treated in the Tiruverumbur Medical Centre and referred here. It is also recorded that the assault details not known. The Doctor, in Exp6, has mentioned that the deceased was brought unconscious in one place and in another place mentioned as brought dead. According to the prosecution case, it was PW1, who took the deceased to TMC Hospital at Tiruverumbur and then to the



Government Hospital, Tiruchirappalli.

18. According to the ExP6, the deceased was brought by one Raman. The said Raman was examined as PW3. He is the cousin of PW1. But according to PW3 even before he reached the occurrence place, PW1 and PW2 took the deceased to the Hospital and therefore, he was treated as hostile. Under such circumstances, it is not known as to who took the deceased to the hospital. If the deceased was taken to the hospital either by PW1 or PW3, it is not known, why it has been recorded in the accident register as unknown in the column name and address. Further, the history of the case is mentioned as assault details not known. In the ExP6, the place of occurrence is also stated that the patient was brought from Annaivalavu Ravichandran colony, whereas the occurrence has taken place at Sreenga tiffin stall in Ayyampatti Road.

19. A perusal of the records shows that PW1 was residing at Ayyanarkovil Street, North Thuvakudi and he was running a tiffin stall in Ayyampatti road at Thuvakudi. The distance between the house of PW1 and PW3 is elicited through the Auto Driver [DW1] that is around 5 hundred metres and the distance between the house of the PW1 and the occurrence place is not known. But according to the prosecution, the appellant and the deceased quarrelled in respect of watching Television and on witnessing the quarrel, the adjacent Tea Stall employee PW2 informed PW1 over phone and therefore, PW1 along with PW3 came to the occurrence place and is said to have witnessed the occurrence. The eye witnesses PW2 and PW3 were treated as hostile. Further, the only available eye witness PW1 is also not trustworthy, in view of the entries made in the accident register [ExP6].

20. That apart, a wooden log has been recovered from the place of occurrence [MO1] as well as another piece of wooden log [MO8] was recovered from the accused. But it was not compared by the investigation agency, that the wooden log MO8 is a part of the wooden log [MO1]. The blood stained materials were recovered from the place of occurrence, from the deceased and the appellant and were also sent for chemical examination. Though the presence of human blood was detected on those materials, the blood group was not detected.

21. The motive for the occurrence is projected by the prosecution that while watching Television, there was a quarrel between the deceased and the appellant and on account of which, the appellant assaulted him with wooden log. However, a defence was taken during the cross examination that the deceased was having affairs with the wife of PW1 and when it was warned by PW1, the deceased replied in a casual manner, to go and ask his wife.



Therefore, PW3 Raman assaulted the deceased with an iron rod and in order to safeguard PW3 the cousin of PW1, he has foisted a false case as against this appellant.

22.Further, the Investigation Officer [PW11] though visited the place of occurrence and also prepared the observation mahazar [Exp2] and rough sketch [Exp9] has failed to note the availability of the television in the occurrence place, which is said to be the cause for quarrel and the incident. The case of the prosecution is that it is only due to watching Television the occurrence has taken place, but the prosecution has not established that whether there was any Television available in the place of occurrence at the time of occurrence.

23.As already held, in view of the entries made in Exp6 the accident register, the evidence of PW1 also cannot be believed and therefore under such circumstances, it is not safe to convict the appellant. This Court is of the view that the prosecution has not established its case beyond reasonable doubt and therefore, the benefit of doubt is extended to the appellant/accused.

24.In the light of the above discussion,

- the appeal is allowed;
- the conviction and sentence imposed on the appellant / accused in S.C.No.217 of 2012 dated 28.06.2013 on the file of the Principal Sessions Judge, Tiruchirappalli are set aside; and
- the appellant is acquitted of the charge framed against him and the fine amount, if any paid by him, shall be refunded.

25.This Court places its appreciation on record to Mr.S.Ravi, learned Legal Aid Counsel and the Legal Services Authority is directed to pay a sum of Rs.10,000/- to the learned Counsel.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The Principal Sessions Judge,
Tiruchirappalli.
- 2.The Judicial Magistrate No.VI, Trichy.
- 3.The Chief Judicial Magistrate, Trichy.
- 4.The Inspector of Police,
Thuvakudi Police Station,
Trichy City.

Copy to:

- 1.The Record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Superintendent,
Central Prison,
Tiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Officer Incharge,
Legal Services Authority,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.285 of 2015
11.09.2020

KMV(CO)
TR(22.04.2021) 9P 10C